IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.841 OF 1990
WITH
CROSS OBJECTION (ST) NO.15596 OF 1991

The State of Maharashtra, through Special Land Acquisition Officer, Ulhas Valley Project, Thane, District Thane.) ...Appellant

Versus

Shri Arun Sadanand Nakhawa, Age: 42 years, Residing at Nakhwa Chawl, Opposite Bank of Maharashtra, Gokhale Road, Naupada, District Thane.) ...Respondent

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Shri A.R.Patil, A.G.P for the Appellant.

Shri Amol P. Mhatre for the Respondent.

CORAM : ABHAY S. OKA, J.

DATE ON WHICH SUBMISSIONS ARE HEARD : FEBRUARY 28, 2007.

DATE ON WHICH JUDGMENT IS PRONOUNCED : MARCH 09, 2007.

JUDGMENT:

1. I have heard the submissions of the learned A.G.P and the learned Advocate for the Respondent. The challenge in this Appeal is to the Judgment and Award dated 23rd November, 1989 in the Land Acquisition Reference No.46 of 1985. The said

reference was under section 18 of the Land Acquisition Act, 1894. The Appeal relates to the land bearing Gat No.111/1 admeasuring 1 acre and 8 gunthas and 12 annas equivalent to 4932 sq meters. The acquired land is situated at village Dighe, Taluka and District Thane. The land was notified under section 4 of the said Act of 1894 by a notification dated 22nd October, 1964. The Award was made by the Special Land Acquisition Officer offering market value at the rate of Rs.2/- per sq meter. A reference was made at the instance of the Respondent under section 18 of the said Act of 1894. By the impugned Judgment and Award, the learned Joint District Judge, Thane fixed the market value at the rate of Rs.4/- per sq meter and granted certain statutory benefits to the Respondent.

2. The Appeal is preferred by the State of Maharashtra for reduction in the market value. There is a cross-objection filed by the Respondent praying for enhancement in the market value.

3. The learned A.G.P appearing for the Appellant submitted that none of the sale instances relied upon by the Respondent can be said to be comparable to the acquired land as the said instances do not relate to

the lands situated in the village in which the acquired land is situated. He submitted that the entire burden of proving the market value was on the Respondent and he has not discharged the burden. The learned Advocate for the Respondent submitted that in respect a comparable land, market value at the rate of Rs.6/- per sq meter was awarded and the said decision of the reference Court has been confirmed by this Court. He submitted that on the basis of the said sale instance, the Respondent was entitled to market value at the rate of Rs.6/- per sq meter. He pointed out that interest at the rate of 15% per annum has not been granted in terms of section 28 of the said Act of 1894. He invited my attention to the evidence of the Respondent as well as the evidence of one Shri Jaywant Ramchandra Chandratre who was examined by the Respondent.

4. I have considered the submissions. The Respondent stepped into witness box and stated that the acquired land is situated near Belapur road and near the factory of M/s Mukund Iron and Steel. According to him the said factory is located at the distance of 50 to 60 feet from the acquired land. According to him there was a road at the distance of

100 feet from the acquired land. The witness Jaywant examined by the Respondent was working as a Special Land Acquisition Officer, Ulhas Valley Project at Thane between period 1978 to 1986. According to him he had surveyed the acquired land. He produced in evidence a map showing the location of the acquired land. However, the said map was not admitted in evidence as it was a xerox copy. The said witness has referred to land bearing Gat No.149 situated at village Airoli owned by one Martin Alwares. According to the said witness the Thane-Belapur Road is located at the distance of 5 to 6 furlongs from the acquired land. According to him Gat No.149 owned by the said Martin Alwares was at a distance of 300 feet from Thane-Belapur Road. The Respondent relied upon Judgment and Award in Land Acquisition Reference No.45 of 1985 in respect of land bearing Gat No.149 of village Airoli of the said Martin Alwares. In case of the said land, the reference Court had fixed market value at the rate of Rs.6/- per sq meter.

5. The Trial Court has noted in the impugned Judgment that an Appeal being First Appeal No.460 of 1987 was preferred in this Court for challenging the said Judgment and Award in Land Acquisition Reference

No.45 of 1985 and the Appeal was pending. Therefore, I called for the papers of the said Appeal. The record of the said Appeal shows that the same has been dismissed on merits.

6. The only question is whether the land which is subject matter of the said reference can be said to be comparable to the acquired land. The acquired land is situated at village Dighe and the said land of Martin Alwares is situated in nearby village Airoli. Both the lands have been notified for acquisition for the same purpose on the same day. Both the lands are situated in a belt known as Thane-Belapur Belt. As pointed out earlier the land of Martin Alwares is at a distance of 300 feet from Thane-Belapur Road and the acquired land subject matter of this Appeal is at a distance of 5 to 6 furlongs from Thane-Belapur Road. The land of Martin Alwares appears to be more advantageously located as compared to the acquired land subject matter of this Appeal. Therefore, the said land cannot be said to be a comparable land. In the case of Martin Alwares this court has confirmed the market value at the rate of Rs.6.40/- per sq meter. In the present case, considering the location of the acquired land, the reference Court has fixed

the market value at the rate of Rs.4/- per sq meter. I find not error in the approach of the reference Court. Considering the facts and circumstances of the case, the market value fixed at the rate of Rs.4/- per sq meter appears to be just and proper. Therefore, the prayer made by the Appellant for reduction in market value and the prayer made by the Respondent for enhancement in the market value cannot be granted.

7. The Respondent was entitled to market value calculated at the rate of Rs.4/- per sq meter together with interest under section 23(1-A) and solatium under section 23(2) of the Land Acquisition Act, 1894. The Respondent was entitled to interest under section 28 of the said Act of 1894. As per section 28 of the said Act of 1894, on the excess compensation amount awarded by the reference Court, the Respondent was entitled to interest at the rate of Rs.9% per annum for a period of one year from the date of taking over possession of the acquired land and interest on the said amount at the rate of Rs.15% per annum for further period. However, the reference Court has awarded interest at the rate of 9% per annum for the entire period. Therefore, the operative part of the Award will have to be modified.

8. Hence, I pass the following order:

(i) Appeal is dismissed.

(ii) The Appellant will pay costs of the Appeal to the Respondent.

(iii) Cross-objection Stamp No.15596 of 1991 is partly allowed.

(iv) The operative part of the impugned Judgment and Award is modified. The said operative part will now read thus:

. "The Land Acquisition Reference is partly allowed. The claimant is entitled to market value of the acquired land at the rate of Rs.4/- per sq meter. In addition to the said market value, the claimant will be entitled to statutory benefits under section 23(1-A), 23(2) and 28 of the Land Acquisition Act, 1894. The claimant will be entitled to

proportionate costs of the reference from the opponent".

(v) The reference Court will calculate the amount of compensation payable to the Respondent as per the modified Award within a period of four months from the date on which the writ of this Judgment is received by the said Court. While calculating the amount, the reference Court will naturally consider the amounts which are already deposited by the Appellant on the basis of the impugned Judgment and Award.

(vi) There will be no orders as to costs in the cross-objection.

JUDGE